

1 THOMAS E. PEREZ
2 Assistant Attorney General
3 JAMES A. MCDEVITT
4 United States Attorney
5 Eastern District of Washington
6 JOHN M. GADZICHOWSKI
7 Chief
8 ESTHER G. TAMBURRO-LANDER
9 Deputy Chief
10 LORI B. KISCH
11 Senior Trial Attorney
12 United States Department of Justice
13 Civil Rights Division
14 950 Pennsylvania Avenue, NW
15 Patrick Henry Building, Rm 4031
16 Washington, D.C. 20530
17 Telephone: (202)305-4422
18 TYLER H.L. TORNABENE
19 Assistant United States Attorney
20 Post Office Box 1494
21 Spokane, WA 99210-1494
22 Telephone: (509) 353-2767

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE EASTERN DISTRICT OF WASHINGTON**

18 ROBERT BRIAN ROBINSON,

19 Plaintiff,

20 v.

21 MILNE ENTERPRISES, INC., d/b/a
22 MILNE, NAIL, POWER TOOL &
23 REPAIR,

24 Defendant.

Civil Action No. CV-10-5045-LRS

CONSENT DECREE

25 **INTRODUCTION**

26 This matter is before the Court for entry of this decree by consent of the parties
27 to effectuate a compromise and settlement of all claims. After review and
28

CONSENT DECREE - Page 1

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APR 16 2010

CLERK, U.S. DISTRICT COURT
SPOKANE, WASHINGTON

1 consideration, the Court believes that entry of this decree is in the interest of justice.

2
3 1. Plaintiff, Robert Brian Robinson ("Robinson"), commenced the above
4 entitled action in the United States District Court for the Eastern District of
5 Washington, alleging that the Defendant Milne Enterprises, Inc., d/b/a Milne, Nail,
6 Power Tool & Repair ("Milne") violated the Uniformed Services Employment and
7 Reemployment Rights Act of 1994 ("USERRA") by failing to re-employ Robinson in
8 the position of Assistant Manager, which is the position Robinson would have been
9 employed in had his employment not been interrupted by Robinson's military service
10 and by retaliating against him when he exercised his rights under USERRA.
11

12
13 2. Milne denies that it has violated USERRA.

14
15 3. Nevertheless, Robinson and Milne (collectively referred to as the
16 "Parties"), as a result of settlement discussions, have resolved their differences and
17 have agreed that this action should be settled by entry of this Consent Decree. It is
18 the intent of the parties that this Consent Decree be a final and binding settlement in
19 full disposition of all claims alleged in the Complaint filed in this case.
20

21 **STIPULATED FACTS**

22
23 4. Pursuant to USERRA, the parties acknowledge the jurisdiction of the
24 United States District Court for the Eastern District of Washington over the subject
25 matter of this action and of the parties to this case for the purpose of entering this
26 Decree and, if necessary, enforcing this Decree.
27
28

1 5. Venue is proper in this district for purposes of this Decree and any
2 proceedings related to this Decree only. Milne agrees that all statutory conditions
3 precedent to the institution of this lawsuit have been fulfilled.
4

5 **FINDINGS**

6 6. Having examined the terms and provisions of the Consent Decree, the
7 Court finds the following:
8

9 a. The Court has jurisdiction over the subject matter of the action and the
10 parties to this action.
11

12 b. The terms and provisions of this Consent Decree are fair, reasonable,
13 and just. The rights of the parties are protected adequately by this
14 Decree.
15

16 c. This Consent Decree conforms with the Federal Rules of Civil
17 Procedure and USERRA, and is not in derogation of the rights and
18 privileges of any person. The entry of this Consent Decree will further
19 the objectives of USERRA and other applicable laws and will be in the
20 best interest of the parties.
21

22 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND**
23 **DECREED AS FOLLOWS:**

24 **NON-ADMISSION**

25 7. This Decree is being entered with the consent of the parties and shall not
26 constitute an adjudication or finding on the merits of the case or be construed as an
27
28

1 admission by Milne of any violations of USERRA, or any other law, rule or
2 regulation, dealing with or in connection with equal employment opportunities.
3

4 **NON-RETALIATION**

5 8. Milne shall not take any action against any person which constitutes
6 retaliation or interference with the exercise of such person's rights under USERRA,
7 or because such person gave testimony or assistance or participated in any manner in
8 any investigation or proceeding in connection with this case.
9

10 **REMEDIAL REQUIREMENTS**

11
12 9. Without admitting the allegations set forth in the Complaint, and in
13 settlement of the claims of Robinson, Milne shall pay Robinson a total of \$13,500,
14 comprised as follows:
15

16 (a) \$6,750 in back pay, less those employee tax withholdings and
17 employee contributions as required by law, which Milne timely shall
18 pay to the appropriate governmental agencies on behalf of Robinson.

19 Milne shall separately pay to the appropriate governmental agencies the
20 appropriate employer's contribution due on the \$6,750 back pay portion
21 of the total monetary award; i.e., the employer's contribution shall not
22 be deducted from any part of the monetary award to Robinson.
23

24 (b) \$6,750 in liquidated damages.
25
26
27

1 10. Within (7) business days from the date of entry of this Decree, Milne
2 shall pay Robinson the \$6,750 in back pay, less employee tax withholdings and
3 employee contributions; and a portion of the liquidated damages totaling \$3,250. The
4 remaining \$3,500 of liquidated damages shall be paid to Robinson within 90 days of
5 entry of the Consent Decree with payments as follows: \$1,200 within 30 days of the
6 entry of the Consent Decree; \$1,200 within 60 days of the entry of the Consent
7 Decree; and \$1,100 within 90 days of the entry of the Consent Decree. Milne shall
8 pay the required amounts to Robinson by mailing to Robinson a check addressed as
9 follows:
10
11
12

13 Robert Brian Robinson
14 250 Gage Blvd., Apt. 2075
15 Richland, WA 99352

16 Milne shall provide documentary evidence of having paid Robinson by mailing a
17 photocopy of the check evidencing payment to the following address within three (3)
18 days of payment to Robinson:
19

20 Lori B. Kisch
21 Senior Trial Attorney
22 United States Department of Justice
23 950 Pennsylvania Ave., NW
24 Civil Rights Division
25 Employment Litigation Section, PHB, Room 4031
26 Washington, DC 20579

27 11. Milne agrees to provide Robinson with a letter of recommendation
28 which is attached hereto as Exhibit A. Milne further agrees to withdraw its complaint

1 of theft against Robinson by sending a letter to the Pasco Police Department within
2 seven (7) business days of the entry of this Consent Decree indicating such
3 withdrawal. A copy of the letter to be mailed to the Pasco Police Department is
4 attached hereto as Exhibit B. Milne shall provide documentary evidence of having
5 sent the letter to the Pasco Police Department by mailing a copy of such letter to Lori
6 B. Kisch at the address provided in paragraph 10 within three (3) business days of its
7 mailing to the Pasco Police Department.
8
9

10
11 12. For and in consideration of the relief being provided to him described in
12 paragraphs 9 -11 of this Decree, Robinson releases and discharges Milne from the
13 claims identified in the Complaint filed in this case and the complaint Robinson filed
14 with the Department of Labor, complaint number WA-2008-00003-10-G. This
15 release and discharge of claims is subject only to Milne's compliance with the terms
16 of this Decree.
17

18 **DISPUTE RESOLUTION AND COMPLIANCE**

19 13. This Court shall retain jurisdiction over this matter and will have all
20 available equitable powers, including injunctive relief, to enforce this Decree. Upon
21 motion of either party, the Court may schedule a hearing for the purpose of reviewing
22 compliance with this Decree. The parties shall engage in good faith efforts to resolve
23 any dispute concerning compliance prior to seeking a resolution of such dispute by
24 the Court. In the event of a dispute, the parties shall give notice to each other ten (10)
25
26
27

1 business days before moving for review by the Court. The parties may conduct
2 expedited discovery under the Federal Rules of Civil Procedure for the purpose of
3 determining compliance with this Decree or defending against a claim of non-
4 compliance.
5

6 **MISCELLANEOUS**
7

8 14. All parties shall bear their own costs and expenses of litigation,
9 including attorneys' fees.
10

11 15. This Consent Decree constitutes the entry of final judgment within the
12 meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in
13 this action.
14

15 16. The terms of this Consent Decree shall be binding upon the present and
16 future directors, employees, agents, administrators, successors, representatives, and
17 assigns of Milne and upon the heirs, successors, and assigns of Robinson.
18

19 17. This Consent Decree constitutes the entire agreement and commitments
20 of the parties. Any modifications to this Decree must be mutually agreed upon and
21 memorialized in a writing by all parties.
22

23 18. Milne has been informed by the United States that it may seek legal
24 advice regarding its entry into this Consent Decree and its associated legal obligations
25 and/or rights arising from the Decree.
26

1 19. The parties execute the Consent Decree voluntarily, knowingly and
2 willingly.
3

4 **EFFECTIVE DATE**

5 20. The effective date of this Consent Decree shall be the date upon which it
6 is entered by the Court.
7

8 21. This Consent Decree shall expire, and this action shall be dismissed,
9 without further order of this Court, one year from the date of the entry of this Consent
10 Decree. Robinson may move, for good cause, to extend the decree. The Decree will
11 not be extended, however, unless the Court grants Robinson's motion. Any such
12 extension may be granted by the Court only for such time as is necessary to effectuate
13 the relief set forth in this Decree.
14
15

16
17 APPROVED and ORDERED this 27th day of April, 2010.
18
19
20

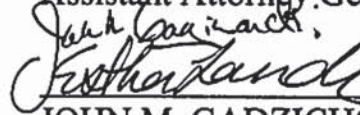
21 s/Lonny R. Suko

22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27

Respectfully submitted on this _____ day of _____, 2010.

THOMAS E. PEREZ

Assistant Attorney General



JOHN M. GADZICHOWSKI

Chief

ESTHER G. TAMBURIO-LANDER

Deputy Chief

LORI B. KISCH

Senior Trial Attorney

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section

950 Pennsylvania Avenue, NW, PHB

Washington, DC 20530

Telephone: (202) 305-4422

Facsimile: (202) 514-1005

Email: John.M.Gadzichowski@usdoj.gov

Email: Esther.Tamburo@usdoj.gov

Email: Lori.Kisch@usdoj.gov

JAMES A. MCDEVITT

United States Attorney

Eastern District of Washington



TYLER H.L. TORNABENE

Assistant United States Attorney

Post Office Box 1494

Spokane, WA 99210-1494

Telephone: (509) 353-2767

Facsimile: (509) 353-2766

Email: USA-WAE-Ttornabene@usdoj.gov

Attorneys for Plaintiff



ROBERT BRIAN ROBINSON
250 Gage Blvd, Apt. 2075
Richland, WA 99352

Plaintiff

A handwritten signature in black ink, appearing to read 'David Milne', is written over a horizontal line.

DAVID MILNE
Vice President
Milne Enterprises, Inc., d/b/a
Milne, Nail, Power Tool & Repair
1303 W. Lewis Street
Pasco, WA 99301
Telephone: (509) 547-7834

Defendant

April 9, 2007

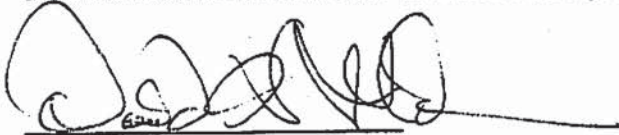
To Whom It May Concern:

I am genuinely pleased to give my professional recommendation for Brian Robinson. I am the Manager/Co-owner here at our store and was Brian's immediate supervisor for almost five years. Every day we'd spend considerable time together and I found him to be punctual, consistent, pleasant, and hard working.

Brian is a take-charge person who is able to present creative ideas and communicate the benefits of applying them. When we opened a new store, it was Brian who researched on his own to find the most effective computer system and software for us, and then presented that information to the heads of our company. He is one of the brightest people I have met over the years of running this business, and he used that intelligence to help our company get to a higher level faster than we would have without him.

During his employ, Brian worked his way from a part time sales clerk with limited duties to a full time Assistant Manager. As Assistant Manager he worked with me in overseeing and participating in day to day sales, shipping and receiving, inventory, and conducting outside sales to other businesses. He conducted himself professionally and more often than not, he would be wearing our company's uniform shirt, though not required to do so. Brian Robinson also took it upon himself to do other employee tasks so as the job would get done right in a timely manner. Even if it meant doing menial tasks such as shoveling snow, stocking shelves, setting up displays, fixing leaks in the roof and assembling equipment. He was always there for our customers, answering questions and giving concise, knowledgeable information to help them select the products they would need (all while keeping our bottom line in mind).

Sadly, Brian left our store to enlist in the military and is now pursuing an education in the medical field. Though this will surely be an enormous undertaking, Brian has shown time and time again that he is capable of seeing things through to completion and taking pride in the work he does. He has my absolute recommendation and I feel he will be a great asset to any company or organization.

A handwritten signature in black ink, appearing to read 'David G. Milne', with a long horizontal line extending to the right.

David G. Milne
Manager / Co-owner
Milne Enterprises, Inc. d/b/a
Milne, Nail, Power Tool & Repair

Pasco Police Department
525 North 3rd Avenue
Pasco, WA 99301

Re: Robert Brian Robinson and Milne, Nail, Power Tool & Repair
Police Records Nos. 07-16182 and 08-04985

Dear Pasco Police Department:

I am writing on behalf of Milne Enterprises, d/b/a Milne, Nail, Power Tool & Repair. In February of 2008, my father, Randy Milne, filed a complaint against Robert Brian Robinson alleging that he was involved in a theft from our family store in the spring of 2007. I am writing on behalf of my family and the Milne store to withdraw all of our complaints against Robert Brian Robinson. We ask that this letter of withdrawal of our complaint be maintained in any files that exist regarding our previous complaints against Robinson.

Thank you.

A handwritten signature in black ink, appearing to read 'David Milne', is written over a horizontal line.

David Milne
Manager and Co-Owner
Milne Enterprises, Inc., d/b/a
Milne, Nail, Power Tool & Repair